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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,152	03/05/2002	Simon J. Porter	H0003706 (4760)	5937

128 7590 07/19/2004

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EXAMINER
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PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 10/091,152	Applicant(s) PORTER ET AL.	
	Examiner Marc A Patterson	Art Unit 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 29-37 and 61-67.

Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See attached

**ADVISORY ACTION*****Acknowledgement of Applicant's Amendments***

1. The amendment made in Claim 1 in the After Final Amendment filed June 7, 2004 has not been entered because the amendment raises a new issue. The claims prior to amendment were not directed to a nylon film that 'consists essentially of nylon 6, nylon 66, nylon 6/6,6 or a combination thereof' or a first nylon layer that 'consists essentially of nylon polymer' or an ethylene vinyl alcohol layer that 'consists essentially of ethylene vinyl alcohol. The amendment would therefore require further search and consideration to be completely addressed. Even if the amendment was entered, the amended claim would not overcome the rejection because when an applicant claims that additional materials are excluded by the recitation 'consisting essentially of,' applicant has the burden of showing that the introduction of additional components would materially change the characteristics of applicant's invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964) ; *In re Herz*, 537 F2d. 549, 551 – 552, 190 USPQ 461, 463 (CCPA 1976).

Applicant argues, on page 6 of Paper No. 11, that amended Claim 29 is patentable over the proposed combination of references because Hayes does not disclose layers that consist essentially of nylon or ethylene vinyl alcohol.

However, as stated above, the claims prior to amendment were not directed to a nylon film that 'consists essentially of nylon 6, nylon 66, nylon 6/6,6 or a combination thereof' or a first nylon layer that 'consists essentially of nylon polymer' or an ethylene vinyl alcohol layer that 'consists essentially of ethylene vinyl alcohol. The amendment would therefore require further search and consideration to be completely addressed. Even if the amendment was

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entered, the amended claim would not overcome the rejection because when an applicant claims that additional materials are excluded by the recitation 'consisting essentially of,' applicant has the burden of showing that the introduction of additional components would materially change the characteristics of applicant's invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964) ; *In re Herz*, 537 F2d. 549, 551 – 552, 190 USPQ 461, 463 (CCPA 1976).

Applicant also argues, on page 6, that Japanese Patent 10110096 does not rectify the shortcomings of Hayes.

However, as stated on page 4 of the previous Action, Japanese Patent No. 10110096 teaches the use of nylon 6 in the making of a packaging film for the purpose of obtaining a film having improved mechanical strength (English Abstract; Advantage). Therefore, one of ordinary skill in the art would have recognized the utility of providing for the nylon 6 of Japanese Patent No. 10110096 in Walton et al, which is a packaging film, for the purpose of obtaining a desired mechanical strength of the end product as taught by Japanese Patent No. 10110096.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for the nylon 6 of Japanese Patent No. 10110096 in any of the nylon layers of Hayes in order to obtain a film having improved mechanical strength as taught by Japanese Patent No. 10110096.

Applicant also argues on page 6 that Balloni et al does not rectify the shortcomings of Hayes.

However, as stated on page 4 of the previous Action, Balloni et al teach that it well known in the art to use a polydimethylsiloxane (column 1, line 38) which reduces the coefficient of friction of a packaging material (column 1, lines 27 – 31), therefore as a lubricant, for the

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purpose of obtaining a packaging material which has excellent moisture barrier properties and is usable in automatic packaging machines (column 1, lines 7 – 13). Therefore, one of ordinary skill in the art would have recognized the utility of providing for the polydimethylsiloxane taught by Balloni et al in Hayes and Japanese Patent No. 10110096, which is a packaging material, depending on the desired moisture barrier properties and usability in automatic packaging machines of the final product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for the polydimethylsiloxane taught by Balloni et al in Hayes and Japanese Patent No. 10110096 in order to obtain a packaging material which has excellent moisture barrier properties and is usable in automatic packaging machines as taught by Balloni et al.

Applicant also argues, on page 7, that Toney et al does not rectify the shortcomings of Hayes.

However, as stated on page 5 of the previous Action, Toney et al teach that an antifog composition which is comprised in a polyolefin layer (antifogging agent is blended into the layer; column 3, lines 10 – 11) migrates to the surface to create the antifog effect (column 3, lines 60 – 62); the layer therefore comprises a surface coating of the antifog composition; the property of having a surface coating of an antifog composition is therefore inherent to Hayes and Japanese Patent No. 10110096, as it comprises a polyethylene layer which comprises an antifog composition.

Applicant also argues on page 7 that Hofmeister et al does not rectify the shortcomings of Hayes.

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However, as stated on page 6 of the previous Action, Hofmeister teaches the use of nylon 666 (column 29, line 4) as the nylon layer in a packaging film (column 2, lines 37 – 38) for the purpose of obtaining a film having good tensile strength (column 1, lines 55 – 56). Therefore, one of ordinary skill in the art would have recognized the utility of providing for the nylon 666 of Hofmeister et al in Hayes and Japanese Patent No. 10110096, which is a packaging film, depending on the tensile strength of the end product as taught by Hofmeister et al.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for the nylon 666 of Hofmeister et al in any of the nylon layers of Hayes and Japanese Patent No. 10110096 in order to obtain a film having good tensile strength as taught by Hofmeister et al. The cited references to Walton et al are intended to refer to Hayes.

### *Conclusion*

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 – 1497. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571) 272 – 1498. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

*Marc Patterson*  
Art Unit 1772

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

*7/16/04*